

1 STATE OF NEW JERSEY  
2 DEPARTMENT OF COMMUNITY AFFAIRS  
3 NEW JERSEY PRIVACY STUDY COMMISSION

4 \_\_\_\_\_  
5 In the matter of: Transcript of  
6 Public Interest Subcommittee Proceedings  
7 Meeting

8 \_\_\_\_\_  
9  
10 Computer-aided transcript of hearing  
11 taken stenographically in the above-entitled  
12 matter before KAREN L. DeLUCIA, a Certified  
13 Shorthand Reporter and Notary Public of the  
14 State of New Jersey, at the Mercer County  
15 Community College, Communications Building,  
16 Room CM-110, Mercerville, NJ, on Tuesday, June  
17 10, 2003, commencing at 4:00 p.m.

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1    A P P E A R A N C E S :

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SUBCOMMITTEE MEMBERS:

5

JUDGE ROSEMARY KARCHER-REAVEY, Chair

6

LARRY LITWIN, Commission Chairman

7

GEORGE CEVASCO

8

JACK McENTEE

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RICHARD DeANGELIS, JR.

10

PAMELA McCAULEY

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H. LAWRENCE WILSON, JR.

12

WILLIAM KEARNS

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1 JUDGE KARCHER-REAVEY: Good  
2 afternoon, ladies and gentlemen. I'm sorry  
3 we're a little bit late, but we're almost on  
4 time, and I hope everybody can find a place to  
5 park. We had a little bit of a problem with  
6 security not knowing about the parking  
7 situation, but I hope that's been straightened  
8 out.

9 I'm Rosemary Reavey. I'm the chair  
10 of the Subcommittee of the Privacy Study  
11 Commission on Public Hearings. And this public  
12 hearing is hosted by the Public Interest  
13 Subcommittee of our Commission. The Commission  
14 was created under the Open Public Records Act,  
15 and at this hearing we hope to have the public  
16 comment on privacy issues raised by the  
17 collection, processing, use and dissemination  
18 of information by public agencies.

19 Several members of the Subcommittee  
20 are here, and that indicates our interest and  
21 our concern about getting input from the  
22 public; and that's the purpose of this hearing  
23 this afternoon. We have a brief statement of

24 the issues, and several questions to consider.  
25 The handout is located at the back of the room,

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1 kind of where you came in. And I think there  
2 are some at either door, but if not, they're  
3 certainly over on that side.

4 All public comments that are made  
5 today are being recorded. We have a  
6 stenographer, and also a tape-recorder. We are  
7 going to submit them to the Commission as part  
8 of its study on all of these issues. The one  
9 thing I would ask, and must ask, is that  
10 individuals and organizations have to limit  
11 their comments to no more than five minutes.  
12 Anybody who is a representative of an  
13 organization with a prepared statement, we  
14 would be happy to accept them. If they fill  
15 out a form identifying him or herself and  
16 provide a copy of the prepared statement, if  
17 possible. And, again, they're located in the  
18 back of the room.

19 We don't have a sign-in sheet, and  
20 we want you to know that your name and address  
21 are not necessary. That's one of the questions  
22 we have as far as privacy is concerned. It's

23 not mandatory that you provide this  
24 information, but it would be for the purpose of  
25 informing you of any additional hearings, or

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1 hearings before the Commission itself. No one  
2 will be prohibited from making a comment  
3 because he or she does not provide the  
4 information.

5 We have microphones at either  
6 aisle, and would ask that you please, I know I  
7 don't always keep my voice up, but we ask you  
8 to keep your voice up; and if you identify  
9 yourself, it would only be for that purpose,  
10 and you don't have to do it. But if you are  
11 representing an organization, we would like you  
12 to indicate who it is.

13 As I said, the purpose of the  
14 public hearing, these public hearings, and  
15 there are going to be two more, is to collect  
16 information. It's a neutral forum where we  
17 hope and expect the public to give the  
18 Commission some insight into what concerns you  
19 have. Concerns have been expressed about home  
20 addresses and telephone numbers because they  
21 certainly are a part, or an area where many

22 individuals expect a right of privacy,  
23 especially if they're unlisted. So we hope to  
24 hear from those who use information from public  
25 records, and also who are concerned about the

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1 use of records, public records.  
2 I want to emphasize that your  
3 opportunity to speak today or to write to the  
4 Commission or email them, that, too, is on the  
5 handout. And also if, as we sit here and talk  
6 about things, you think of something else you  
7 want to say, please don't hesitate to come back  
8 to the microphone, or as I said, write to the  
9 Commission. The time limit is necessary, and  
10 we'd appreciate your considering that.

11 Now, the issues that we think you  
12 should consider, the questions, how do you  
13 think New Jersey should strike a balance  
14 between a recognized need for openness in  
15 government, and concerns for personal privacy  
16 and security. We're seeking feedback on  
17 whether and to what extent home addresses, home  
18 telephone numbers of citizens should be made  
19 publicly available by public agencies to whom  
20 they are provided. And also whether and to

21 what extent any personal information of  
22 citizens should be made publicly available,  
23 again, by public agencies.

24 We're going to have two  
25 presentations, which I think is going to give

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1 you some background, on the Commission and the  
2 privacy concerns, and also some issues that we  
3 are hoping to deal with. It's a very complex  
4 area. Catherine Starghill from the Attorney  
5 General's Office is going to make those  
6 presentations.

7 MS. STARGHILL: Good afternoon.  
8 We're having a bit of -- we're having some  
9 technical difficulties right now, so I'm hoping  
10 that everyone picked up one of the two Power  
11 Point presentations at the back of the room to  
12 my left, your right. We're going to go through  
13 the presentation entitled New Jersey Privacy  
14 Study Commission. And this presentation is  
15 going to give you all the idea, or give some  
16 background information about the Commission  
17 itself and its members and its purpose.

18 The Privacy Study Commission was  
19 created under the Open Public Records Act. The



20 Open Public Records Act defines the State's  
21 policy that government records with certain  
22 exceptions should be readily accessible to the  
23 public for inspection, examination and  
24 copying. While limitations on the public's  
25 right of access should be decided in the

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1 public's favor, public agencies are required to  
2 keep up citizens' personal information from  
3 public access when that access would violate  
4 the citizens' reasonable expectation of  
5 privacy.

6 Now, this is the legislative  
7 mandate which really led to, or leads the  
8 Commission in its study. The Commission was  
9 established as a temporary body of thirteen  
10 members, nine appointed by the Governor, and  
11 four appointed by the legislature.  
12 Appointments were to be coordinated, or were  
13 coordinated to provide a balance so that there  
14 would be both advocates for citizen privacy  
15 interests, as well as advocates for increased  
16 access to government records. Included in this  
17 presentation is some general and very brief  
18 information about each Commission member.

19                   The first listed is Larry Litwin,  
20   who is the chairperson, or chairman of the  
21   Commission.

22                   Larry, could you raise your hand,  
23   please?

24                   Larry is a professor of public  
25   relations and advertising at Rowan University.

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1   The other names are in random order.

2                   Thomas Cafferty, who is also  
3   present -- oh, I'm sorry, I thought I saw him  
4   come in. Thomas Cafferty is General Counsel to  
5   the New Jersey Press Association. There is  
6   George Cevasco, who is present.

7                   Would you raise your hand, George?

8                   George is a municipal clerk for the  
9   Township of Brick. Of course the former Judge  
10   Rosemary Reavey who is chairing this hearing,  
11   former Superior Court Judge in Middlesex  
12   County. Jack McEntee, Detective with the  
13   Newark Police Department. Richard DeAngelis,  
14   who I believe just entered, attorney  
15   specializing in legislative and regulatory  
16   affairs. Pamela McCauley, who is not present,  
17   is director of the office of Victim Witness

18 Advocacy in the Essex County Prosecutor's  
19 Office. Grayson Barber, who is also not  
20 present today, is an attorney specializing in  
21 privacy rights advocacy. Karen Sutcliffe, also  
22 not present, is an attorney specializing in  
23 municipal law.

24 We have three public hearings; this  
25 one, one on June 16th, and one on June 17th.

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1 The hearings are strategically throughout the  
2 State so to accommodate both the public, as  
3 well as the Commission members. So every  
4 Commission member will not be at every public  
5 hearing.

6 John Hutchison, Research Director  
7 of the Senate Republican office. H. Lawrence  
8 Wilson, who is here, retired Sergeant of  
9 Investigators in the Ocean County Prosecutor's  
10 Office. Edithe Fulton, who is not present  
11 today, is president of the New Jersey Education  
12 Association. And William Kearns, who is  
13 present, General Counsel of the New Jersey  
14 League of Municipalities.

15 The Commission was legislatively  
16 mandated to study the privacy issues raised by

17 the collection, processing, use and  
18 dissemination of information by public  
19 agencies. The Commission has a very focused  
20 goal. It must balance the need for both  
21 openness in government with the concerns of  
22 privacy and security of individuals or citizens  
23 of New Jersey.

24 There are some specific privacy  
25 questions that the Commission will address in

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1 its study.

2 What are the privacy issues raised  
3 by the way government agencies collect,  
4 process, use and disseminate information?

5 How is openness in government  
6 effected by privacy issues?

7 How should we deal with these  
8 issues to safeguard the privacy rights of  
9 individuals?

10 There are a lot of sub questions  
11 that come in with these questions, as well, but  
12 these are some main focus questions that the  
13 study -- or the Commission is focusing on.

14 The Commission has established  
15 subcommittees to address specific issues

16 surrounding the issue. Those subcommittees are  
17 Public Interest, Data Practices in New Jersey,  
18 Data Practices In Other Jurisdictions,  
19 Commercial Use, and Technology. I'm going to  
20 briefly run through the focus of each of these  
21 subcommittees.

22 Of course for the Public Interest  
23 Subcommittee, it is to consider the views of  
24 the public as individuals and groups  
25 representing various issues on the issue of how

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1 and where to strike a balance between openness  
2 and privacy. And, of course, it is the Public  
3 Interest Subcommittee that is hosting this and  
4 the next two public hearings.

5 The Data Practices in New Jersey  
6 Subcommittee will strive to develop an  
7 understanding of the types of personal data  
8 collected by public agencies in New Jersey.  
9 And then consider the methods used to collect  
10 that data, assess the data's current and  
11 potential use, and contemplate the views of  
12 public administrators on the data's  
13 management.

14 The Subcommittee on Data Practices

15 in Other Jurisdictions will learn the  
16 strategies employed by other governments to  
17 safeguard the privacy rights of its citizens.  
18 It benchmarks other states with best practices  
19 and privacy protection; a few of those states  
20 are California, Connecticut, Hawaii, Florida  
21 and Illinois. These states were chosen because  
22 they rank very high in their protection of  
23 personal information of their citizens. And,  
24 of course, it is the job of this Subcommittee  
25 to benchmark the U.S. and the European union in

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1 its data practices.

2           The Subcommittee on Commercial Use  
3 will identify and consider the commercial uses  
4 of government information, both positive and  
5 negative. The positive use, of course, being  
6 credit rating agencies and employers. Negative  
7 users obviously being identity thieves and  
8 other misused information.

9           The Subcommittee on Technology will  
10 examine how technology facilitates the  
11 collection of data. It will also examine how  
12 data can be manipulated within government. It  
13 will examine how data is used when made

14 available to the public, and examine the effect  
15 on government data when it is combined with  
16 data from other sources; better known as "data  
17 mining", which is something that is of great  
18 concern to the Commission.

19               The Commission has an additional  
20 mandate, and that is to study the issue of  
21 whether and to what extent the home addresses  
22 and home telephone numbers of citizens should  
23 be made publicly available by public agencies.  
24 There is a special directive, or special  
25 subcommittee established to address just this

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1 issue. And this mandate, of course, was given  
2 to the Commission by the Governor in Executive  
3 Order Number 26.

4               At the end of its study and  
5 conclusion of its research the Commission will  
6 recommend specific measures to address these  
7 privacy issues. And these measures could  
8 include legislation if the Commission deems  
9 appropriate.

10              We have here listed also the  
11 Commission meetings, which are open meetings  
12 under the Open Public Meetings Act. Our next

13 meeting, or the Commission's next meeting is  
14 June 20th. All of the meetings are held at the  
15 Department of Community Affairs in Conference  
16 Room 129; that's at 101 South Broad Street in  
17 Trenton. And the meetings are held at 10:30.  
18 I think it's here listed as 10:00; it's 10:30.

19 On the next page we have the dates  
20 for the public hearings; this one, of course,  
21 being the first. And I would like to clarify  
22 that while we've listed the public hearings as  
23 running from 4:00 to 7:00, everyone present who  
24 wishes to give comment will be afforded that  
25 opportunity. The Commission members are

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1 willing and are prepared to stay as long as  
2 necessary, within reason, of course. But it is  
3 the goal of the Commission to allow everyone  
4 present who wishes to comment to have that  
5 opportunity.

6 And contact information; there is  
7 an email address for the Privacy Study  
8 Commission. And that is [privacy@dca.state.nj.us](mailto:privacy@dca.state.nj.us).  
9 And the Privacy Study Commission will have a  
10 web site up and running in the next couple of  
11 days. And that web site will have a lot of



12 information regarding the study, what's going  
13 on, dates of additional hearings, if they're  
14 called for. We'll also list, of course, the  
15 dates of the Commission meetings. That web  
16 site address is [www.nj.gov/privacy](http://www.nj.gov/privacy).

17 That's the conclusion of the  
18 overview of the Commission itself. We're going  
19 to now have a presentation of a very brief  
20 presentation on the background and history of  
21 privacy. This presentation was put together by  
22 one of the Commission members, Grayson Barber,  
23 who is unable to attend today, so I am filling  
24 in for Grayson. Again, copies of this  
25 presentation are located at the back of the

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1 room.

2 What is privacy?

3 When we think of privacy we think  
4 of personal security, control over personal  
5 information, freedom from unreasonable searches  
6 and seizures, individual dignity, property  
7 interest and name and image or likeness; that's  
8 often a concern of celebrities; and the right  
9 to be left alone. A lot of people express this  
10 concern in comments that we've been receiving

11 via the email address because of the onslaught  
12 of solicitation, unwanted solicitation from  
13 advertisers.

14 Control over personal information.  
15 You might think of the issue of telephone  
16 numbers, home addresses, Social Security  
17 numbers, which is less of an issue.

18 Freedom from unreasonable searches  
19 and seizures we might think of the thermal  
20 imaging equipment that is actually used by some  
21 police organizations. There is actually a case  
22 that Grayson likes to bring up where a police  
23 organization actually used thermal imaging to  
24 see in a suspect's home in order to determine  
25 which room he or she was in to better equip

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1 themselves to nab them, I guess. And, of  
2 course, that's a great, to some of you, that's  
3 a great invasion of your personal privacy.

4 Individual dignity we might think  
5 of medical decisions. Obviously we don't want  
6 -- the public does not necessarily want all of  
7 their medical history available. Of course,  
8 the new Federal Legislation HIPA was enacted to  
9 address some of that.

10                   There are constitutional privacy  
11   protections contained in the First Amendment  
12   Right to Free Expression. Well, actually First  
13   Amendment Right to Free Expression is central  
14   to the American Legal Tradition of Free Speech  
15   and Privacy. Fourth Amendment Freedom from  
16   Governmental Overreaching. Substantive liberty  
17   interests. And there is the writing in the New  
18   Jersey State Constitution.

19                   There is a federal statutory  
20   privacy framework that is more akin to  
21   patchwork. If we look at the various  
22   legislation out there, there is the Freedom of  
23   Information Act, which, of course, opens up  
24   government to public inspection. And its  
25   counterpart is the Federal Privacy Act of 1974,

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1   which comes in to kind of fill the gap of where  
2   there might be too much openness, or to protect  
3   some personal privacy.

4                   There's also the Fair Credit  
5   Reporting Act of 1970. The Cable Act of 1984.  
6   The Electronic Communications Privacy Act. And  
7   all the others listed. So there's a lot of  
8   legislation at the federal level. States have

9     been catching up to some extent in addressing  
10    these issues, but, again, there's no unified  
11    statutory framework.

12                 The next slide goes into the fair  
13    information practices. And these are widely  
14    accepted principles that are the basis of many  
15    privacy laws in the United States, Canada,  
16    Europe and other parts of the world. The  
17    principles were actually first formulated by  
18    the U.S. Department of Health, Education and  
19    Welfare in 1973. Ironically these principles  
20    have been enacted or legislated outside of the  
21    U.S. more than they have inside.

22                 The principles are relevance; that  
23    the information collected by governmental  
24    agencies should have relevance to the purpose  
25    for which it is collected.

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1                 Purpose; that there should be an  
2    underlying purpose to the information  
3    collected.

4                 Use limitations; which are policy  
5    options that the Commission could consider, and  
6    that is that personal information may be  
7    available for very limited use by a few members

8 of the public interested, like, perhaps, police  
9 organizations and the like.

10                   Quality; that the information  
11 should be accurate and kept up to date as  
12 opposed to personal information remaining in  
13 government files that is outdated or  
14 inaccurate.

15                   Security; the information should  
16 definitely be secured perhaps by policies and  
17 procedures required of government agencies.

18                   Access; that the information should  
19 be accessible by the person or the subject of  
20 the information. Many states have provisions  
21 which allow subjects to have access to their  
22 own information and to verify that the  
23 information is up to date, it is accurate.

24                   Consent is one of the principles  
25 which requires that the subject of the

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1 information actually consent to any disclosures  
2 or dissemination of this information. Again,  
3 many states have provisions within either their  
4 Freedom of Information Act or Privacy Act which  
5 require consent and accountability. And some  
6 states go so far as to provide a right of

7 action for the subject of information against  
8 those who improperly disseminate and use their  
9 personal information.

10               There are many reasons for the fair  
11 information practices. Many reasons why a  
12 state or other governmental entity would  
13 legislate. Some are to ensure that data  
14 collection is fair and subject to law; to build  
15 consumer confidence; establish stable business  
16 environment. That is one of the major goals of  
17 the European unions' use of the fair  
18 information practices, to ensure that business  
19 use of the personal information is consistent  
20 across the board.

21               And to reap benefits of new  
22 technology while safeguarding interest.  
23 Obviously that is another great concern. With  
24 the advent of internet access and all kinds of  
25 different new technologies out there, it has

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1 become easier to access personal information  
2 and government records. So that is of great  
3 concern.

4               Failures and privacy protection.  
5 Of course, we're all familiar with identity

6 theft, which is the fastest growing crime in  
7 the U.S. These are a couple examples of  
8 failures in privacy protection that Grayson  
9 likes to throw out.

10 Of course the Prozac in the mail.  
11 I don't know how many of you all heard of this,  
12 but bald rooms (ph.) actually got lists of  
13 health patients who have been diagnosed with  
14 depression and they sent samples of Prozac to  
15 these individuals totally unsolicited in the  
16 mail. Of course, some view that as quite an  
17 invasion of privacy.

18 ToySmart.com went bankrupt and sold  
19 its subscriber list, which included largely  
20 minors, to the highest bidder. And obviously  
21 the parents were very concerned when their  
22 children were being contacted by solicitors, or  
23 advertisers for toys, or what have you.

24 And just the whole idea of  
25 individuals having a scarlet letter on their

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1 sleeve or on their shoulder, because perhaps  
2 someone gets information from government  
3 agencies or from some source and that  
4 information is incorrect, inaccurate, not

5 up-to-date, and it may be very detrimental to  
6 their personal and professional lives.

7 What is to be done?

8 We have to have open government; we  
9 understand that that has to be part of the  
10 equation. But there are some policy options  
11 that may be considered, and are being  
12 considered by the Commission. One is maybe  
13 opt-in for disclosure of personal data.  
14 Meaning that the subject of personal  
15 information would have to agree to disclosure  
16 of his or her information. Of course, New  
17 Jersey could implement the Fair Information  
18 Practices. New Jersey could allow lawsuits for  
19 invasions of privacy. We could enact new laws  
20 for new technologies. Basically the Commission  
21 is trying to figure out what might best work  
22 for New Jersey.

23 Grayson is a strong advocate; she  
24 believes that open records are essential, but  
25 she very strongly would like to protect

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1 privacy. She thinks that there should be free  
2 expression and private -- she believes that  
3 free expression and privacy are both essential



4 for democracy. And that without open  
5 government there is no privacy because, of  
6 course, thinking of government as "big  
7 brother". The government would be free to do  
8 whatever if there were no checks or balances on  
9 open access to records. And open records can  
10 shed light on government without disclosing  
11 personal information about individuals.

12 So that's a general and very brief  
13 overview of the history and background of the  
14 privacy issues. For any of you all who will  
15 come to the public hearings on the 16th and  
16 17th, I'm sure that presentation will be a lot  
17 more exciting when given by Grayson who is a  
18 little bit more expressive and definitely  
19 passionate about all of these issues.

20 I will now turn the floor back to  
21 Judge Reavey for opening comment.

22 JUDGE KARCHER-REAVEY: Thank you,  
23 Catherine.

24 I know that we had a Power Point  
25 presentation that Grayson was very proud of,

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1 but you'll have to come back on the 16th or  
2 17th to see it. Of course, she will be at

3     those two meetings.

4                     Again, I have to emphasize that  
5     we're very happy and we're very anxious to hear  
6     your comments, but we have to limit you to five  
7     minutes just because of time constraints for  
8     other people who would also like to be heard.

9                     We don't necessarily need you to  
10    come in any order, but I do have two sign-ins  
11    that were done, and I think we ought to hear  
12    from those people first. There are microphones  
13    at either aisle. Just be sure that we can hear  
14    you, because as I said, we're very anxious to  
15    bring the information that we are able to  
16    collect, the data, back to the Commission as a  
17    whole.

18                    I have Andrew Glasgow (ph.); is he  
19    still here patiently waiting? If you will come  
20    up to the microphone.

21                    MR. GLASCOW: Good afternoon.  
22    Thank you for the opportunity to come and  
23    speak.

24                    You have a vast task before you,  
25    and I can only address a little piece of it,

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1     which comes out of my professional experience.

2 I come as a representative today of a company  
3 called Data Trace, which is in the business of  
4 providing access to public records and  
5 searching information to the title insurance  
6 industry.

7                   We are a California based company  
8 with operations in 24 states. And for the past  
9 year we have been attempting to duplicate our  
10 business model and establish similar practices  
11 here in New Jersey. What it essentially means  
12 is that we are building a data base that  
13 consists of the land records from the county  
14 clerk's office, as well as tax records and  
15 judgment records that are required and  
16 necessary for real estate transactions to take  
17 place. And we build an effective and automated  
18 type searching system which creates a situation  
19 where, for instance, in Florida where we have  
20 operations you can complete a full title  
21 search, everything that you need in about 15  
22 minutes, for about \$40. Whereas in New Jersey  
23 under current practices it will take you at  
24 least a week, and the consumer will pay about  
25 \$200. So there's obviously some advantages to

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1 the type of service that we offer.

2 My experience in working here in  
3 New Jersey and in contacting various county  
4 clerks for tax purposes and so on, runs the  
5 wide scale of what I would call at the one end  
6 a very progressive and cooperative and  
7 professional responses from individuals, to the  
8 other end where perhaps it's not appropriate to  
9 describe them. But people who are  
10 uncooperative and unprofessional and  
11 discourteous make it very difficult for us to  
12 try and do what we're attempting to do. So we  
13 still have a ways to go here in New Jersey.

14 Now, the databases that we build  
15 contain, again, deeds, mortgages, tax  
16 information, sole judgments, but they're not  
17 available on the internet, so they're only  
18 accessible to clients who have a legitimate  
19 stake in the title insurance industry; title  
20 searches, title companies, attorneys, and so  
21 on. It's the same information that any of you  
22 can walk into the county clerk's office or the  
23 tax office and see. But, again, it's only  
24 available on a subscription basis. So there's  
25 no real danger to security; there's no

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1 information that would be obtained there that  
2 would be different. We don't sell any  
3 information to any other commercial entities,  
4 or building mailing lists, or doing any sort of  
5 activity.

6                   So our concern is as we hear  
7 comments I guess from some officials in various  
8 places that corporations who want to build big  
9 databases are the bad guys, and we need to be  
10 protected against them. That's not necessarily  
11 true. Each case needs to be studied  
12 individually. And we hope that as you continue  
13 to review these issues that you look at it in a  
14 fair minded way, and that you consider each  
15 case based on the actual circumstances that are  
16 involved.

17                   We think that, for instance, in our  
18 industry, if we're successful in putting  
19 together the business plan, that there's  
20 benefits not only to the public in terms of  
21 better service and lower costs, but also  
22 there's benefits to the government record  
23 agencies because we reduce the amount of  
24 traffic that's in the public buildings. We  
25 preserve the quality of the records that are

1    there.  I don't know if you've been in the  
2    county clerk's office, but you can go in some  
3    clerk offices and open a book and the pages  
4    will fall out because they've been heavily  
5    used, and in some cases abused.  In our case  
6    where we're building those records and  
7    containing images on a database, that no longer  
8    has to happen, so those records are in some  
9    ways protected.

10                    So again thank you for the  
11    opportunity to speak.  And I wish you the best  
12    with your work here.

13                    JUDGE KARCHER-REAVEY:  Thank you.

14                    I also have a sign-in from Jim  
15    Gerbin (ph.)

16                    MR. GERBIN:  Thank you for the  
17    opportunity to speak today.  I will be brief  
18    since my comments are very impromptu.

19                    I come really in a dual role.  
20    Professionally I serve as the coordinator of  
21    Geographic Information Systems for the County  
22    of Somerset.  I also am participating as a  
23    member of the Open Data Consortium for the  
24    Urban Regional Systems Association.  An  
25    international group that is attempting to

1 develop a policy to help guide government  
2 organizations in making available GIS,  
3 Geographic Information System data.

4               In my capacity as a GIS  
5 coordinator, I'm both an advocate for access to  
6 data, as well as a concerned policy advisor and  
7 policy developer to guide our governing body,  
8 or county Freeholders to implement a policy  
9 that safeguards the welfare of our residence.  
10 Those who are familiar with the GIS technology  
11 and the historic development of it are aware of  
12 the fact that this technology and the  
13 organizations that use it are very much based  
14 upon data sharing. Sharing between government  
15 agencies; sharing between non-profits public  
16 sector and private sector. But it's a very  
17 difficult line to walk both being entrusted  
18 with data and also being able to -- having the  
19 responsibility of making that information  
20 available.

21               I was very concerned when OPRA  
22 first came out, and still am concerned, that it  
23 neglected to address, and I hope that the  
24 technology committee will look into this  
25 further, the capabilities of new technology of

1 using data in ways that had never been thought  
2 of before. The analytical capabilities and the  
3 gentleman who preceded me was referring to  
4 these supposedly innocuous data sets that are  
5 available to the public. A lot of this data is  
6 collected in a geo-spatial format that allows  
7 uses to conduct analysis through the  
8 combination of information. That is very  
9 easily used for malicious purposes.

10 And, again, I refer back to being  
11 both an advocate and a protector of the public  
12 in my position. So I'm aware of the statements  
13 that I make may actually be counter to one-half  
14 of the person that I am. However, I think that  
15 this Committee and the Technology Committee  
16 needs to look at the capabilities of these new  
17 technologies, and how data is used within it.  
18 And very possibly come up with a different  
19 standard of access that allows for a greater  
20 level of scrutiny for the use that this data  
21 will be applied to.

22 It's something that we can provide  
23 information to anyone who -- or must provide  
24 information to anyone who requests it, and can  
25 really apply very limited restrictions to do



1   that without violating the intent of OPRA. And  
2   to be very candid, there are many times when we  
3   withhold information, complete data sets that  
4   contain names and addresses of individuals that  
5   live within the county simply for the concern  
6   of their own personal privacy. We're yet to be  
7   challenged on withholding that information, but  
8   I'm sure if anyone hears my comments, they may  
9   decide to come and ask and challenge me when  
10  it's denied.

11               But I think that the governing  
12  officials, at least in Somerset County, are  
13  willing to put their concerns over the rights  
14  and privacy concerns of the residents of the  
15  county ahead of maybe the statutory right for  
16  individuals to access this information.

17               Thank you.

18               JUDGE KARCHER-REAVEY: Thank you  
19  very much.

20               I don't have any more names, but  
21  anybody who would like to be heard, come right  
22  up to our microphone. I guess it would be  
23  helpful if you gave us your name and identify  
24  your organization, if you have one.

25

MR. ABOLINS: Okay. Thank you.

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1 I've been often said that I don't have  
2 organization, I have disorganization.

3 My name is Jonathan Abolins, and  
4 I'm here as a private citizen, who also as a  
5 professional hobby, so they say, runs a web  
6 site that deals with information security and  
7 privacy issues. So this is a very important  
8 topic to my interests.

9 Now, the Commission does have a  
10 very difficult job ahead because privacy isn't  
11 one of those things where you have toxicity  
12 studies, or you can do statistical studies to  
13 give an absolute point where something is  
14 really a problem or not. It's a matter of more  
15 relationships than of technology; yet  
16 technology does touch upon it. It is the  
17 relationship, for example, of the buyer and the  
18 seller; the governed and the government. And  
19 these get very complex, because depending on  
20 where you stand the use will differ.

21 For example, the gentleman speaking  
22 for the title data service has one view; a  
23 homeowner may have a different view. And

24 there's going to be a challenge, how do we  
25 bring these together. Because if you have

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1 society where privacy is held to be paramount,  
2 you can end up with a situation that actually  
3 has happened in Sweden, where it's very  
4 difficult, for example, to write an article  
5 about somebody unless you have their expressed  
6 consent. Even a club web site, say for a dog  
7 club or a gardening club, can get into trouble  
8 if it mentions something about one of its  
9 members, even in the most benign sense. So  
10 that's one thing danger. The other one, of  
11 course, is where everyone is living in an  
12 opticon (sic) fish bowl, and that among other  
13 things, can elicit behavior that can be very  
14 destructive to society.

15 For example, people under sensitive  
16 constant observation may end up adjusting their  
17 actions to avoid trouble. If you ever worked  
18 in a super micro managed workplace, you  
19 sometimes see that. No one dares to take  
20 initiative because if you take initiative  
21 you're responsible and it will beat on the  
22 way. Hopefully a confident individual moves

23 out of that and moves into a better line of  
24 work. By the way, that is an example of  
25 privacy as a help for personal autonomy in a

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1 free society.  
2                   Now moving along, because this has  
3 many issues. That one of the challenges is how  
4 do we collect data. We have different ways of  
5 viewing data now. Now the fellow speaking  
6 before me talked about GIS. And it's a  
7 wonderful segue to the concept of meta-data;  
8 data about data. When someone asks you for an  
9 address; is it an address to contact you, to  
10 find you physically, or is it an address  
11 because you're not really the subject of  
12 interest, but as in the case of title search,  
13 your property, the address is of interest. And  
14 I found that a lot of problems come out of  
15 ambiguity. People who collect the data aren't  
16 sure what they really need; they don't always  
17 express it well; and then also there may not be  
18 a choice. And this can be a very critical  
19 problem.

20                   I believe California addressed this  
21 in regards to stalking because they had a very

22 notorious case; a woman who was killed by  
23 information obtained. And I'm not going to go  
24 into those details, but as I understand one of  
25 the things they had considered was for public

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1 disclosure of addresses. Giving a person an  
2 option to have a contact address, say that of  
3 an attorney if someone is a stalking victim. A  
4 point where public interest in contacting this  
5 person has a point, but not necessarily where  
6 the person physically resides. Meanwhile the  
7 state of California would have the actual  
8 physical address; for example, for DMV  
9 functions.

10               These are some of the challenges,  
11 but to close off my five minute allotment,  
12 Catherine Starghill mentioned the ToySmart.com  
13 incident. It wasn't simply that the company  
14 collected information about children, what was  
15 more important is it collected information  
16 under one type of promise which elicited trust  
17 to disclose that information, but then the  
18 promise was broken. And this is a very  
19 critical thing for government, for commercial  
20 entities. People can often choose to vote with

21 their feet and dollars. For government your  
22 main choice is immigration or dropping out of  
23 society, which aren't necessarily good  
24 practical options.

25 Thank you for your consideration.

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1 I will send further comments to the  
2 Commission.

3 JUDGE KARCHER-REAVEY: Thank you.

4 I don't have any more forms filled  
5 out, but would anybody else like to be heard?

6 MR. WAGNER: I'm Alvin Wagner. I'm  
7 the Chief of the Bureau of Records Management  
8 and Division of Archives Records Management. I  
9 just wanted to offer our assistance in your  
10 very difficult, it's been underlined so many  
11 times, efforts.

12 Just one point, and I think it's  
13 already been brought out. One of our areas of  
14 concern is one that's already been expressed,  
15 about disclosure of complete data sets, and in  
16 particular GIS information or databases. And I  
17 think it's one of the things, if I could  
18 address, including commercial use of public  
19 records. There's been over the last couple

20 years various bills have been introduced or  
21 considered along those lines. And I'd be glad  
22 to share some of that with you and help out in  
23 any way we can.

24 JUDGE KARCHER-REAVEY: Thank you  
25 very much. As I said, you can submit it in

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1 writing.

2 Anyone else?

3 MS. MARSTERS: Hi. My name is  
4 Susan Davis Marsters and I'm with Serve  
5 Behavioral Health System.

6 Some of my concerns is that private  
7 nonprofits collect all sorts of information on  
8 people they serve. And as receiving funds from  
9 public state agencies that information would  
10 then be available; that's already been an  
11 issue. So some of my concerns are will the  
12 eligibility to receive services be contingent  
13 on signing waivers so personal data can be  
14 disclosed under OPRA? It appears that OPRA  
15 will conflict with HIPA, which seems designed  
16 to protect citizens in need of services that  
17 for individual and family circumstances would  
18 remain private.

19                   And also of concern is the ability  
20   to protect the disabled who are served by  
21   nonprofits. There are already issues where  
22   people do not want people with disabilities as  
23   neighbors. If addresses and phone numbers of  
24   residential programs are made available,  
25   disabled individuals may be more harassed and

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1   more discriminated against than they are  
2   already.

3                   And my other concern was that under  
4   OPRA it would seem that people who are victims  
5   of crime, that if their information is made  
6   public, then they can be re-victimized again  
7   from being in contact with the people they  
8   don't want to know what happened to them.

9                   JUDGE KARCHER-REAVEY: That's a  
10   real concern. Thank you. I hope you  
11   understand that we, the Commission, are not  
12   supposed to be commenting ourselves, or asking  
13   questions, we're collecting data today.  
14   Because we do have diverse opinions, not  
15   necessarily on your issues, but some of these  
16   issues.

17                   Anybody else?



18                   Suppose we just take maybe a five  
19 minute break and see if anybody thinks of  
20 anything they'd like to add and stretch our  
21 legs out.

22                   (Whereupon, a brief recess was  
23 taken.)

24                   JUDGE KARCHER-REAVEY: It got kind  
25 of quite, so I wondered if anybody had any

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1    comments or wanted to state their concern about  
2    any particular area about these privacy issues  
3    or concerns?

4                   I guess not.

5                   We schedule these from 4:00 to 7:00  
6    because we're expecting maybe people might want  
7    to come after work. And we had some people  
8    promptly at 4:00, and we may have some later.  
9    So we expect to stay. You may be enlightened  
10   if you stay, as well, but we certainly won't be  
11   offended if any of you leave.

12                  (Whereupon, a brief recess was  
13 taken.)

14                  JUDGE KARCHER-REAVEY: I think most  
15 of the people who are on the Subcommittee are  
16 here. We have somebody else who would like to

17 make some comments.

18                   You haven't heard any of my  
19 preliminary remarks, Mr. Baehr, but that's  
20 okay.

21                   I should indicate that Mr. Baehr  
22 has provided a written statement, and I think  
23 he's just going -- are you just going to  
24 summarize your comments, Mr. Baehr? You can go  
25 on as long as you like, but we limited

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1 everybody else to five minutes.

2                   MR. BAEHR: Okay. Well, I didn't  
3 know what the format would be, so I didn't sort  
4 of abridge the actually fairly lengthy comments  
5 that I prepared, but I'll try to summarize them  
6 quickly.

7                   I represent the New Jersey  
8 Foundation for Open Government, which is a  
9 coalition organization. It includes a number  
10 of organizations, including League of Women  
11 Voters of New Jersey, Common Cause New Jersey,  
12 American Civil Liberties Union of New Jersey,  
13 the New Jersey Chapter of the Society of  
14 Professional Journalists, the New Jersey  
15 Citizen Action, United Taxpayers of New Jersey,

16 VOICES, and a number of local community  
17 groups.

18 We were formed in January 2001 to  
19 advocate for open records and open meetings.  
20 We were strong supporters of the OPRA law and  
21 of this Commission. We felt that this  
22 Commission was the right way to deal with the  
23 issue, the very complex issue of privacy rather  
24 than trying to have the legislature hash this  
25 out in the midst of everything else. This was

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1 the wise way to do it. Because this is a very  
2 delicate and difficult balancing act between  
3 privacy and openness in government. And both  
4 are important badges.

5 Because you've been charged by the  
6 Governor to make immediate recommendations  
7 concerning his earlier proposal, or concerning  
8 the disclosure of home addresses, that's what  
9 I'd like to comment on today.

10 JUDGE KARCHER-REAVEY: Good.

11 MR. BAEHR: New Jersey FOG Board  
12 considered this question at its last board  
13 meeting in June 4, and agreed that such a  
14 sweeping ban on disclosure of home addresses

15 is unnecessary, unworkable, and would seriously  
16 undermine the purposes of the Open Public  
17 Records Act. Couple of reasons; number of  
18 reasons.

19                   One, OPRA has been in effect for  
20 almost a year now, and all of the issues that  
21 have come up have not involved -- really  
22 privacy has not been a major issue in what's  
23 come up so far. All the cases before the  
24 Government Records Council, none of them  
25 involved privacy, none of the court cases. So

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1 to some extent if it ain't broke, don't fix  
2 it.

3                   Second, the brief experience that  
4 we did have under Executive Order 21  
5 demonstrated some of the practical difficulties  
6 involved in such a blanket band. There was a  
7 lot of confusion were voter registration lists  
8 opened or closed; we didn't know for sure.  
9 Property tax books; were they open. Accident  
10 reports have to be redacted to eliminate home  
11 address. Arrest records; police incident  
12 reports. There was a lot of confusion about  
13 that; so it caused some problems.

14                   So if you have an exception to OPRA  
15   for home addresses where home addresses are  
16   not, then you have exceptions to the exception  
17   to leave other ones open; why go through all of  
18   that. That's not the right -- the blanket kind  
19   of way of doing this is just sort of a  
20   backwards way of trying to deal with the  
21   issue.

22                   There's also a practical difficulty  
23   for record custodians in dealing with a blanket  
24   rule that prohibits disclosing of certain kind  
25   of information, like home address, wherever

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1   they may be. If you're a records custodian,  
2   that means if you're going to conscientiously  
3   do your job, you have to go through every page  
4   of every record that you release to make sure  
5   that it doesn't have somebody's home address,  
6   and they can be in lots of places.

7                   The minutes of a school board  
8   meeting, or the transcript of a public hearing  
9   by a state agency could well have the home  
10   address of a person making statements. I  
11   filled out a form that had my home address. I  
12   don't know why you needed my home address,

13 but --

14 JUDGE KARCHER-REAVEY: At the  
15 beginning of the hearing I said you didn't have  
16 to do that.

17 MR. BAEHR: Right, but that's  
18 normal. They can be sprinkled throughout a  
19 zoning board application or a parade permit,  
20 invoices on file at the county purchasing  
21 department, bids received by a state authority;  
22 you can find home addresses almost anywhere.  
23 And custodian is going to have to -- to comply  
24 with a blanket band like that, would have to --  
25 it would turn redacting records into an Easter

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1 egg hunt.

2 And even then it wouldn't be easy  
3 whether to redact or not, because it's not  
4 always clear whether an address is a home  
5 address or not a home address. You have a list  
6 of state licensed plumbers and beauticians and  
7 lawyers; some of them work at home, so they use  
8 their home address as their office address.  
9 Home businesses; when is a home business  
10 address a business address and when is it a  
11 home address. It just opens up a Pandora's

12 Box. And it will be costly for custodians and  
13 it will make it more difficult for record  
14 requesters to get the records that they need in  
15 a timely manner. Particularly if you get  
16 involved in computer programming and so forth,  
17 how do you -- you may have to do a lot of  
18 computer programming just to take out the home  
19 address and leave in the other. So you've got  
20 a lot of practical difficulties.

21 I'm trying to abridge some of  
22 this.

23 I spent 25 years as a newspaper  
24 reporter, and I know that home addresses are a  
25 convenient identifier of people. If you've got

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1 Juan Gonzalez or Mary Jones, you don't know  
2 where -- you know, which one in the whole State  
3 of New Jersey you're talking about if you find  
4 just the name with no address. If you've got  
5 an address you have a chance of figuring out  
6 who's who. And that's useful for newspaper  
7 reporters, but it's also useful for anyone else  
8 that's trying to find somebody, locate  
9 somebody. Determine if somebody -- if you, say  
10 for instance, want to know if the Notary Public

11 you went to was, in fact, a licensed Notary  
12 Public, well you've got to know. Which one are  
13 you talking about; that kind of thing.

14                   So privacy is an important value,  
15 but so is accountability, and ability to use  
16 records. If you take out home addresses,  
17 you'll make many public records useless, or  
18 much less usability for legitimate purposes  
19 that people have.

20                   And home addresses are a relatively  
21 benign kind of identifier compared to other  
22 things like Social Security numbers, payroll  
23 numbers, credit card numbers, that kind of  
24 thing, which we agree should not be made  
25 public. So save those -- the home address is

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1 something that, well, some people feel private  
2 about. The majority of people don't seem to  
3 have a problem with disclosing their home  
4 address. Most people have listed phone  
5 numbers; they don't go to the trouble of having  
6 unlisted phone numbers. Say their address is  
7 in the phone book. Very few people, or the  
8 minority of people get a post office box.

9                   So most people don't really have a



10 big problem with their home address. They  
11 would have a problem with their Social Security  
12 number, or their credit card number, or their  
13 bank account number.

14 I did a search that's database  
15 available of all of the open meetings and open  
16 records laws throughout the states, along with  
17 the court decisions and so forth. It's a very  
18 useful tool. It's online. It's maintained by  
19 the Reporters Committee for Freedom of the  
20 Press. And I put in the search terms home  
21 address and also just address to see how many  
22 states have dealt with this issue and how they  
23 dealt with it. And those terms came up for  
24 only 23 states. So 27 states and the District  
25 of Columbia don't even mention home address at

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1 all in their laws or the court decisions that  
2 have arisen from their Open Records and Open  
3 Meetings laws.

4 But in 23 states, the 23 states  
5 that do in one form or another shield home  
6 addresses of members of the public all do so in  
7 very specific and limited ways. Usually where  
8 judges or legislators have decided that

9 disclosure could expose an individual to  
10 unwarranted invasion of personal privacy or  
11 significant danger of harm or harassment.

12 So I'll give you some examples.  
13 They're very targeted.

14 South Carolina bars the release of  
15 home addresses of handicap persons when the  
16 address is sought for person-to-person  
17 commercial solicitation of the handicap solely  
18 by virtue of their handicap.

19 Texas closes the addresses of  
20 people applying to work in sex oriented  
21 businesses.

22 Virginia keeps the addresses of  
23 subscribers to Virginia Wildlife Magazine  
24 confidential if they're requested so by the  
25 subscriber.

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1 Georgia won't disclose the  
2 addresses of people signing up for state  
3 sponsored car pool programs. And several  
4 states keep secret the home addresses of gun  
5 permit holders.

6 New York conceals the home  
7 addresses of people receiving housing

8 subsidies, and people holding licenses for cash  
9 checking business.

10 And in Ohio they shield the  
11 addresses of minors applying for ID badges to  
12 use public recreational facilities.

13 You see how all of those are very  
14 targeted and specific to deal with specific  
15 problems of either possible harm or invasion of  
16 privacy. And they all involved a specific  
17 group of records. So they say, well, you can't  
18 have this record in say the list of people who  
19 applied for ID badges for recreational  
20 facilities, or the people who applied for  
21 licenses in sexually oriented businesses; that  
22 kind of thing. So it's specific and so it's  
23 manageable for a records custodian.

24 It's also worth noting that  
25 legislators and judges in a number of states

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1 have taken trouble to specifically find that  
2 home addresses in certain records should be  
3 available to the public. So Georgia keeps open  
4 the addresses of public housing tenants who are  
5 behind on their rent. Several states specify  
6 that home addresses recorded in sexual predator

7 registers are open. Alabama makes the home  
8 addresses of jail inmates public. Arkansas  
9 makes public the addresses of foster families.  
10 California keeps addresses in arrest records  
11 open. Colorado keeps open the home addresses  
12 of occupational license holders and volunteer  
13 fire fighters. Iowa releases the addresses of  
14 public school students, although parents can  
15 opt out. Louisiana keeps open the addresses of  
16 those taking the licensed exam for physical  
17 therapist. Ohio requires that the addresses of  
18 donors to the State University be made public.  
19 And Maryland makes the home addresses of Notary  
20 Public's, although the Notary can have his or  
21 her address left off the records given to  
22 commercial services that publish lists of  
23 Notaries.

24 New Jersey FOG does not endorse  
25 this list of exclusions or inclusions, but what

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1 we do urge the Commission to do is reject any  
2 sweeping ban on the release of home addresses  
3 by New Jersey records custodians. No other  
4 state has found that -- done anything remotely  
5 similar to that.

6                   So just a few bullet points just to  
7 quickly summarize.

8                   As you consider New Jersey's  
9 experience to date and the experience of the  
10 rest of the 50 states, first take a cautious  
11 and targeted approach to any home address  
12 exemptions; there's no crisis here. Be careful  
13 not to create an unworkable administrative  
14 nightmare for conscientious records  
15 custodians. Understand that public records can  
16 lose much of their value to journalists and  
17 public like if identifies like home addresses  
18 are needed. Base any recommendations for  
19 blacking out home addresses on solid  
20 information and strong possibilities, not "what  
21 if" speculation or misleading anecdotes.

22                   Remember that people's home  
23 addresses are widely available outside of  
24 government records. That most people are okay  
25 with that. And that closing off home addresses

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1 in government records will, in fact, do little  
2 to protect people's privacy in this regard.

3                   Be creative. In some instances not  
4 collecting addresses in the first place might

5 be the best solution; and in others letting  
6 individuals opt out may be appropriate.

7 As in all your work, look for the  
8 smartest, the most effective trade-off between  
9 the values of individual privacy and  
10 governmental openness. Both values benefit the  
11 same people, the citizens of New Jersey.

12 If New Jersey FOG can help you  
13 further in your efforts, please call on us.  
14 We're here and we're interested.

15 Thank you.

16 JUDGE KARCHER-REAVEY: Thank you  
17 very much. That was very informative and dealt  
18 with an area that we are first and foremost  
19 concerned with. And I do have your written  
20 statement.

21 Anybody else?

22 (Whereupon, a brief recess was  
23 taken.)

24 JUDGE KARCHER-REAVEY: I don't mean  
25 to interrupt your conversations, but Bill has

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1 to get to a meeting, and we have two more  
2 people who I know would like to be heard  
3 because they handed me their speaker sign-in

4 sheets. Doesn't matter which of you go first.

5                   Lynn Greenberg; if you don't mind,  
6 come right up to the microphone so we can hear  
7 you. And we do have a stenographer, and we  
8 have tape-recorder, which might not be going.  
9 It's right there, and you might have to take it  
10 down a little bit. And you didn't have to give  
11 us your address and phone number.

12                   MS. GREENBERG: Well, you saw what  
13 I put on it.

14                   JUDGE KARCHER-REAVEY: Yes. It  
15 says not to be shared.

16                   MS. GREENBERG: Actually, that's  
17 very much what I have to say, which is that I  
18 have complete freedom to give my name and  
19 address to those whom I choose to give it. But  
20 I absolutely do not want that shared without my  
21 opt-in permission; opt-out is not good enough.  
22 And I get very frustrated with the internet.  
23 And I always opt-out. But if some place  
24 doesn't give me an option to opt-out, I don't  
25 do business with them. I will not.

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1                   And when it comes to the  
2 government, you can use any of my information

3 without me being identified for statistical  
4 purposes; I think that's very legitimate. But  
5 you may not use my name, address, phone number,  
6 email address or anything that would identify  
7 me without my explicit consent. And there's  
8 definite times when I'll give it to you, but I  
9 want the option.

10 Do you have any questions?

11 JUDGE KARCHER-REAVEY: We're not  
12 supposed to be asking questions.

13 MS. GREENBERG: Well, if I asked  
14 you.

15 JUDGE KARCHER-REAVEY: We're  
16 supposed to be collecting data.

17 MS. GREENBERG: Is there anything  
18 else you'd like my opinion on, how about that?

19 JUDGE KARCHER-REAVEY: If there's  
20 anything else you'd like to express an opinion  
21 on, we'd be glad to hear it.

22 MS. GREENBERG: What are the other  
23 major topics?

24 JUDGE KARCHER-REAVEY: Well, we  
25 were concerned about the addresses and

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1 telephone numbers primarily. And we're also



2 interested in whether or not and to what extent  
3 any personal information of citizens should be  
4 made publicly available by public agencies.

5 MS. GREENBERG: None.

6 JUDGE KARCHER-REAVEY: How about  
7 just licensed people, like professionals.

8 MS. GREENBERG: That's a public  
9 recognition that I apply for, and I am a  
10 licensed person in the state. I applied for it  
11 with the understanding that that will be made  
12 public, so I have opted in with that.

13 JUDGE KARCHER-REAVEY: You said you  
14 personally did that.

15 MS. GREENBERG: Well, I feel that  
16 by applying for a license for the State of New  
17 Jersey, I am publicly opting in, but not to  
18 have my address and phone number.

19 JUDGE KARCHER-REAVEY: And, again,  
20 that's because you prefer the "opt-in" approach  
21 to the "opt out" approach?

22 MS. GREENBERG: Yes.

23 JUDGE KARCHER-REAVEY: Does anybody  
24 have any comments?

25 Thank you very much.

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1 MS. GREENBERG: Thank you very  
2 much.

3 JUDGE KARCHER-REAVEY: The other  
4 person that I have who filled out a street,  
5 Latisha Ufford.

6 MS. UFFORD: I'm here because I'm  
7 concerned about encroachments on privacy; and  
8 particularly surveillance. That's not your  
9 issue for this Commission that I know of.

10 JUDGE KARCHER-REAVEY: You  
11 certainly can comment on it.

12 MS. UFFORD: But with my library  
13 readings, particularly email, which I get from  
14 different parts of the world, I feel very  
15 vulnerable to being surveyed in this atmosphere  
16 of sort of fear and overreaction to fear. And  
17 I also would like not to have any personal  
18 information or my name or address go somewhere  
19 unless I give permission. And I'm willing to  
20 be reasonable about that. So it's an "opt in"  
21 preference rather than "opt out".

22 JUDGE KARCHER-REAVEY: Fine. Thank  
23 you very much. And thank you both very much  
24 for coming. As I said, this is a major  
25 preliminary issue that has to be resolved

1 before we can do much more.

2 Thank you.

3 (Whereupon, a brief recess was  
4 taken.)

5 MR. LAUFGAS: I traveled 70 miles.  
6 I'm sorry I'm a little late. My name is  
7 Bernard Laufgas. And my understanding is the  
8 governor appointed this Commission --

9 JUDGE KARCHER-REAVEY: The Governor  
10 has appointed a Commission, and we're a  
11 subcommittee of that Commission hoping to  
12 collect data and information from the public as  
13 to how they feel about these privacy issues.  
14 So whatever you'd like to say, we'd be very  
15 happy to listen.

16 I'm sorry, but I didn't get your  
17 name.

18 MR. LAUFGAS: Bernard Laufgas,  
19 L-a-u-f-g-a-s.

20 JUDGE KARCHER-REAVEY: Thank you,  
21 because we have a stenographer.

22 MR. LAUFGAS: Okay.

23 I'm delighted that our state  
24 government finally is doing something about the  
25 "Right To Know" rule. I've been doing this

1     since 1977. I probably have more litigation  
2     against government agencies than all the  
3     newspapers put together at my own expense.

4                 Started in 1977. I want to see  
5     what the community college in Ocean County is  
6     doing with the money. Because I thought it was  
7     very unfair for athletic director and the dean  
8     of students to take money out of student fees  
9     and pay for their shoes, for a locker, for  
10    their insurance. And I thought it was unfair  
11    that the athletes of the school have to pay for  
12    their own shoes. The dean of student makes a  
13    little bit more money than the student which  
14    are barely survive in going to school.

15                So I ask. They turn their nose at  
16    me. In fact, the president of the school says  
17    we got more money than burning. Well, they  
18    were wrong. Not that they didn't have more  
19    money because they have the taxpayer pockets to  
20    reach. I sued. I got an attorney to sue. You  
21    know what their defense was? I'm not a citizen  
22    of the United States of New Jersey. It's  
23    unimportant I served two tours in Vietnam.  
24    It's unimportant that I volunteer. But to the  
25    dean of student that never put his foot in a

1 uniform; why, because they have plenty of  
2 money.

3           The reason why they could do that  
4 there's no teeth in the "Right To Know" Law.  
5 You want too make it effective, very simple.  
6 When a public official denies you records, make  
7 out the Megan's Law. They have to carry a big  
8 sign saying I'm an idiot. I deny the taxpayer  
9 his right to see public records. Or give him  
10 jail time like they do in Florida. I believe a  
11 year or two years ago a school board member was  
12 denied a member of the public to see public  
13 records, so she got seven days in jail.  
14 Brilliant. That's only a beginning. She  
15 should have got 50 years.

16           You want to work for the  
17 government; God bless you. Have respect for  
18 the people that pay your salary. It's public  
19 record, it's not their's.

20           I ask to see public records at  
21 Paterson, at the City of Paterson. The city  
22 wanted \$56,984. All I wanted to do is look at  
23 records; what they doing with the money. The  
24 judge told them I have no right to see public  
25 records on the common-law or statutory law.

1 You must have a reason. You can't go and  
2 harass the city. The judge doesn't even know  
3 the law.

4 Common-law you need a reason.  
5 Statutory under 47:1a-1 and 2 you don't need a  
6 reason. The reason is you have a right to see  
7 those records. In Highlands versus Nero (ph.)  
8 our Supreme Court said in 1976 the reason and  
9 the purpose for the "Right To Know" Law to keep  
10 an informed citizenry. That's what the "Right  
11 To Know" Law is for.

12 I had to sue Aberdeen Township.  
13 They refused to let my friend see the result of  
14 water test. His water when he turned the  
15 faucet was brown, or rusty, or whatever you  
16 want to call it. It was crap; excuse my  
17 English. I had to sue. The town -- the lawyer  
18 didn't care. He billed the town out of almost  
19 \$50,000. He loved it, going to court. Why?  
20 Why shouldn't that lawyer be penalized? Not  
21 only he should repay those fees, but he should  
22 pay double back to the taxpayers. And he  
23 should pay a fee to the person that requested  
24 the documents.

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1 the "Right To Know" Law. In my town I want to  
2 see records; simple records. They wanted to  
3 charge me \$1.50 a page. The "Right To Know"  
4 Law has fees under 47:1a-2, I believe that's  
5 the statute. It has a set fee; 75 cents a page  
6 for the first ten pages each; 50 cents for the  
7 next ten pages each; and 25 cents thereafter.  
8 A few years ago it was less. So the town --  
9 between the township, the police department,  
10 planning board, zoning board and school board,  
11 they spend a half a million dollars in legal  
12 fees. I just wouldn't quit.

13 The school board, they refused to  
14 let me see records because the board secretary  
15 and a couple of board members didn't like me,  
16 so they said the hell with him, we'll fight  
17 him. I got to see the records. I want to see,  
18 under the Sunshine Law I want to see what the  
19 minutes from their meetings. After no  
20 confidentiality is no longer required, they  
21 have to publish it; they refuse. After I was  
22 told that I'm entitled to see the records, they  
23 have to release it in 30 days. The judge

24 didn't like what I did something outside the  
25 school with a board member. He released

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1 information from my son's school records, so I  
2 give him a Christmas present, a bag of  
3 Chihuahua food, and I made them famous. The  
4 judge didn't like that, so he assessed me  
5 \$1,700 in costs. I had to take it to the  
6 appellate court. They overturn.

7 I had to sue the Parkway, too, and  
8 State Police. I say why are you charging \$10  
9 for accident report? 39:4-131 specifically  
10 says when a person wants an accident report, he  
11 goes to the police station and he pays 75 cents  
12 a page, according with the "Right To Know"  
13 Law. Judge said no, they can only give you  
14 certified copies. I don't want certified  
15 copies. You don't need certified copy. Judge  
16 said, no. I had to take it all the way to the  
17 state supreme court. The case is 156 New  
18 Jersey at 436. I represent myself.

19 Now, the judge couldn't read what  
20 the statute says? She must be blind, or she  
21 must be on drugs because that's the only reason  
22 why she says no. They ruled against me. I



23 took it to Supreme Court; it cost me a couple  
24 thousand dollars because I had to do it on my  
25 own. Supreme Court ruled in my favor. They

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1 got to give you copies under the "Right To  
2 Know" Law. Not at \$10 a copy; it's 75 cents a  
3 page. Why; is it necessary?

4 I filed a suit in another matter;  
5 in Essex County. I asked the county clerk, she  
6 was a deputy clerk at that time. I asked her  
7 for a copy of my own suit that I filed because  
8 I didn't bring enough copies. She said it's  
9 going to cost you \$1.50 a page. I said, okay,  
10 give it back to me, I'll go to the library,  
11 I'll make a copy. She said, no, you already  
12 filed it. So I didn't have a copy. I had to  
13 pay \$1.50 a page? I filed suit. We go before  
14 the judge in Essex County. He's telling me I'm  
15 chasing wind mills. I guess that's the  
16 attitude of the judge.

17 The "Right To Know" Law was not  
18 created for judges; it was not created for  
19 politicians; it was created for the citizen so  
20 he can have informed -- you can have an  
21 informed citizen. As John Kennedy said, "Don't

22 ask what your country can do for you, ask what  
23 you can do for your country". That's what the  
24 "Right To Know" Law is the tool. But no; they  
25 said no.

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1 In my case with Paterson the judge  
2 tells me I have no right to see the records.  
3 Must be some reason you got to see it. What  
4 reason? The only reason I can see the judge  
5 must be on drugs. Should have an operation.  
6 They should take this head out of his rearend  
7 because if a judge doesn't know what the law  
8 is, then nobody knows. And that's part of our  
9 problem. The "Right To Know" Law should have  
10 teeth on it. Should be public.

11 By the way, I sued the DMV to get  
12 public records. That was in 1991. They  
13 refused. Finally when we went before the judge  
14 they turn on this. Okay, we'll give him the  
15 documents. He has to pay us 4.3 million  
16 dollars until we arrange the thing -- you're  
17 surprised, too. I asked Senator Cardinale if  
18 he could write me a check for the 4.3 million  
19 dollars. You can ask Senator Cardinale, he'll  
20 tell you. He said why; so I told him. I said

21 they're out of their mind.

22                   There was a reason why I won.

23 State of New Jersey is violating every drivers'  
24 right in this state. No judge has ever  
25 assessed points. The statute says the judge

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1 has to give you the points. And they don't  
2 tell the DMV how many points they've given  
3 because the transmission document has no place  
4 for points. So the points that the DMV gives  
5 is improper. They're violating everybody's  
6 right. But we shouldn't care.

7                   The same problem that the people  
8 have in Germany and Europe. Hitler took them,  
9 he threw them in the ovens, and he got rid of  
10 them. Some of them were my grandparents on  
11 both sides of the family. They didn't say  
12 nothing. They were very quiet people.

13                   Problem with the "Right To Know"  
14 Law is there's no teeth on it. Tell  
15 McGreevey. By the way, when he was in  
16 Barnegat, he came to visit us in Barnegat  
17 January, I think it was two years ago. I told  
18 him. It went past his head. Evidently they  
19 don't care. I hope this is not for show

20 because, if this is a show it's poor joke on  
21 the people.

22 JUDGE KARCHER-REAVEY: Well, we  
23 hope it isn't, too. We're just a subcommittee,  
24 but we'll bring this information back to the  
25 Commission. And hopefully some of your

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1 comments will be satisfied.

2 MR. LAUFGAS: Put teeth in it.  
3 Part of the problem is the judges. The judge  
4 doesn't like you, so he rule against you, what  
5 does he care. You got 45 days to appeal. Why  
6 should you be appealing? There's no reason for  
7 that. Judges should know. I think that's why  
8 we appoint them. Or is it a joke on us? Do  
9 you just appoint somebody to fill a position?  
10 Some of our judges are a joke, but there is a  
11 few good ones. The Honorable Martin Haines -  
12 he was the former assignment judge of  
13 Burlington County - wrote an article in the Law  
14 Journal about the DMV and the point system.

15 The "Right To Know" Law must  
16 have -- you pass a red light, you're  
17 penalized. You drink and drive, you're  
18 penalized. You molest our children, you're

19 penalized. Why shouldn't our public officials  
20 be penalized? But don't penalize them  
21 lightly. Don't slap them on the wrist like  
22 they did the judge in Plumstead Township when  
23 he had the girl chained for four hours when she  
24 came 15 minutes to court and the Supreme Court  
25 slapped him on the wrist. Penalize them

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1 heavily; \$50,000 first time you refuse to show  
2 records. That's why they have lawyers. Let  
3 the lawyer explain why you're not entitled to  
4 the records. And if the lawyer is wrong,  
5 penalize him. You want the position as a  
6 lawyer for our government agency, God bless  
7 you. You're going to pay for it if you give  
8 wrong advice.

9                   So far the "Right To Know" Law is a  
10 joke. You go -- part of it is improvement that  
11 you have a Commission set and you don't have to  
12 go to court. I might ask them to let me see  
13 the records again.

14                   JUDGE KARCHER-REAVEY: Well, our  
15 hearings are public.

16                   MR. LAUFGAS: One last thing before  
17 I sit down. The lawyer for the City of

18 Paterson, her name is Susan Champion, told the  
19 judge we had no intention to let him see the  
20 records. That's an attorney? That's an  
21 idiot. The law is clear. She's telling the  
22 judge we don't want to let him see the records  
23 because it's him. Why? It's wrong.

24 In Camden I asked to see records  
25 from the tax assessor's office. They turn

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1 around and he said no, so I sued. I take him  
2 to court in Camden County. I say, Judge, we  
3 have a problem, they must be on drugs there.  
4 They don't want to let me see public records.  
5 I don't care if there's a drug problem in  
6 Camden. And that's a judge? Something is very  
7 wrong.

8 If you have the power, ask the  
9 Governor to put teeth, sharp teeth where it  
10 hurts when you penalize anyone for 50, \$100,000  
11 each time you violate the right, and you throw  
12 them in jail for a while. Maybe they will  
13 appreciate what we the taxpayers are giving  
14 them. We giving them a salary. And I think  
15 that's the key problem.

16 JUDGE KARCHER-REAVEY: Okay. Thank

17     you very much.

18                     MR. LAUFGAS:  I have many others,  
19     but...

20                     JUDGE KARCHER-REAVEY:  We'll try to  
21     deal with this.

22                     MR. LAUFGAS:  Sure.

23                     JUDGE KARCHER-REAVEY:  Anybody  
24     else?

25                     I don't know that there are any

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1     more.  We'll stay until seven.

2                     (Whereupon, a brief recess was  
3     taken.)

4                     JUDGE KARCHER-REAVEY:  I think it's  
5     7:00.  I'd like to thank everybody for their  
6     participation personally at this hearing.  And  
7     I expect to see you all at Rowan.  Drive  
8     carefully.

9                     (Whereupon, the meeting was  
10     concluded at 7:00 p.m.)

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1 C E R T I F I C A T E

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8 I, KAREN L. DeLUCIA, License No. XI01888,  
9 a Certified Shorthand Reporter and Notary  
10 Public of the State of New Jersey, do hereby  
11 certify the foregoing to be a true and accurate  
12 transcript of my original stenographic notes  
13 taken at the time and place hereinbefore set  
14 forth.



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Karen L. DeLucia, CSR

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21 Dated: July 7, 2003

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